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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7015 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AJIT BHIKHABHAI RAJMAL

Versus

POLICE COMMISSIONER

Appearance:

1. Special Civil Application No. 7015 of 2004

MR HARSHAD K PATEL for Petitioner No. 1

MS HANSA PUNANI ASST GOVT PLEADER for Respondent No. 1-3

RULE SERVED for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 03/12/2004

ORAL JUDGEMENT

Heard learned counsel for the petitioner and Ms.Hansa Punani, learned AGP for respondent - State.

2. By invoking jurisdiction of this Court under Article 226 read with Article 21 of the Constitution of India, the petitioner has prayed that the order of detention bearing No.PCB/PASA/DTN/63/2004 dated 14th May, 2004 passed by the Police Commissioner, Vadodara - the detaining authority in exercise of powers vested in it under Sub Section [2] of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as the "PASA Act"] be quashed and set aside.

3. It is contended that the order of detention is arbitrary and he ought not to have been branded as chronic bootlegger within meaning of Section 2[b] of the PASA Act.

4. The present petition is resisted by the other side and an affidavit of the detaining authority, the Commissioner of Police, Vadodara City is also filed. Learned AGP Ms.Punani has taken me through the affidavit filed by the detaining authority and the respondents. It is argued that the subjective satisfaction recorded by the detaining authority is legal and valid and detention is based on appropriate grounds and conveyed to the detenu.

5. The order of detention was executed and served to the detenu on 14th instant and grounds for detention was also served to him and they are produced vide Annexure-C [page.19 to 21]. For recording subjective satisfaction, the detaining authority has considered the fact of registration of four different offences. All the offences punishable under Bombay Prohibition Act and especially under Section 66(1)(b), 65(e) and 81 of the said Act. The first offence mentioned in the table is of 16th November, 2003, and the last offence is registered on 12th April, 2004. All four offences have been registered by same police station i.e. North Zone Prohibition Police Station of City of Vadodara and the petitioner was found involved in storing and selling a country liquor. The maximum quantity of country liquor seized as Mudamal is 42 liters of worth Rs.840/-. The sponsoring machinery while placing the papers for appropriate orders before the detaining authority, had produced statement of two witnesses who have claimed privilege of secrecy recorded on 22nd April, 2004 and verified by the detaining authority on 10th May, 2004.

6. Mr.Patel has taken this Court through various grounds assailing the order. He, however, concentrated his argument mainly on the ground that the alleged activities of the petitioner cannot be said to be an activity to be prejudicial to maintenance of public order. Even for the sake of argument, it is accepted that the petitioner was involved in all four offences along with other co-accused persons named in four respective FIRs, even then, the activities can be said to be adverse to maintenance of law and order and not a public order. In response to the querry raised by the Court, Ms.Punani, learned AGP has fairly accepted that in all four cases registered against the petitioner, atleast one more person is also named as an accused and in two of the FIRs, three to four persons were found involved in the offence. According to Ms.Punani, the present petitioner is common in all four offences and therefore, rest of the persons have not been detained under PASA. These arguments are found attractive and logical. But if the same is appreciated in light of the submissions advanced by Mr.Patel, it is possible to simultaneously infer that the petitioner is one of the persons who have responsibility for commission of the offence as one of the accused of that respective crime. Time gap between all these four offences are also found relevant. It is submitted that the observations of this Court in case of ASHOK BALABHAI MAKWANA would help the present petitioner. While dealing with Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 / 2000, the Division Bench of this Court has considered case of the detenu against whom six criminal cases of the offence punishable under Bombay Prohibition were registered and the ground of business of unauthorised liquor coupled with criminal violent activities towards the public health vis-a-vis a public order was pressed into service by the State machinery. The learned Single Judge has upheld the order of detention and reversing the order the Division Bench after considering the decision of K.S.ZALA v. STATE OF GUJARAT reported in 1999 (2) GLH 415 has concluded that it was wrong to conclude that the activity of involvement of the detenu in about five prohibition cases are threat to the public order and prejudicial to maintenance of public order.

7. For the sake of convenience, I would like to reproduce relevant part of para-5 of the aforesaid decision;

"5. If we examine the present case on the anvil of the test which has been applied by the Supreme Court in the case of K.S.Zala v. State

of Gujarat (supra), i.e. with regard to the presence of credible material and as to how the detaining authority has made the mention against the appellant being an obstruction to the public health and public order, we find that in the instant case so far as the statements of the witnesses which were recorded with regard to unregistered case, that ground has been rejected by the learned Single Judge himself. It is, of course, true that after narrating the particulars of the criminal cases, the detaining authority has mentioned that the activities of the appellant were an obstacle to the public health and public order, but this bald observation cannot be taken to be decisive so as to arrive at the satisfaction that the activities of the petitioner were prejudicial to the public order or public health and that tempo of public life was disturbed.

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In large number of case, the Supreme Court has considered that involvement in bootlegging activities even if coupled with violence does not amount to threat to public order or public health. The mere mention of allegations unless they are supported by any material cannot be said to be material germane for the purpose of arriving at the satisfaction with regard to breach of public order or public health and we find that after giving particulars of criminal case, the detaining authority by including certain allegations, not supported by any credible material has simply observed that the appellant's activities were an obstacle to the public health and public order. In this view of the matter, keeping in view the observations made by the Supreme Court in the case of K.S.Zala v. State of Gujarat (supra) itself in paras 4 and 5, we do not find that it can be held to be a case of breach of public health and public order. Learned counsel for the appellant has also argued several other points before us, but we do not find it necessary to go into those grounds. It may be mentioned that it as not a case of breach of public order or public health and it was not argued before the learned Single Judge. Even if that be so, in such matters, the point which arises on the face of the facts of the case by

> the body of the order itself, which does not require further investigation of the facts, can certainly be allowed to be raised and we allow learned counsel for the appellant to raise this point and find that this point is not without substance. The impugned order passed by the learned Single Judge upholding the detention order therefore, cannot be said to be in consonance with the settled position of law. The detention order deserved to be quashed an set aside on this ground alone."

8. So far as the statements recorded by the sponsoring authority and verified by the detaining authority are concerned, one has to carve out the difference between maintenance of law and order and maintenance of public order. A plain reading of the statements does not create an impression that the alleged conduct was able to disrupt maintenance of public order. The totality emerging from record gives an impression that the privilege under Section 9(2) of the PASA Act has not been properly exercised. The alleged incidents narrated by these witnesses could be branded as only disturbance for a while and qua that individual only. In view of this, subject satisfaction of the detaining authority in respect to the activities of the petitioner affecting the public order cannot be said to be recording of finding with proper application of mind and this would go against the validity of the order. So without entering into discussion of any other ground of challenge, the Court is inclined to allow the present petition.

10. The petition succeeds and the same is allowed. The order of detention dated 14.5.2004 passed by the Commissioner of Police, Vadodara City is hereby quashed and set aside. The detenu - AJIT BHIKHABHAI RAJMAL who has been detained at District Jail, Surat be set at liberty forthwith if he is not required in any other case.

Rule is made absolute accordingly. No order as to costs.

Direct Service is permitted.

Date : 3.12.2004 [C.K.Buch, J.]

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